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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

October 16, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

EX PARTE NOTICE

**Re: In the Matter of Communications Assistance for Law
Enforcement Act, CC Docket No. 97-213**

Dear Ms. Salas:

On October 15, 1998, representatives of the Telecommunications Industry Association ("TIA") and its member companies met with staff members of the Federal Communications Commission. This meeting was requested by Commission staff to discuss the deficiency challenges to the industry standard (J-STD-025) brought by the Federal Bureau of Investigation and the Center for Democracy and Technology. The meeting was attended by the following Commission personnel:

**Ari Fitzgerald
Dan Connors
Karen Gulick
Paul Misener
Peter Tenhula
Bob Calaff
Charles Iseman
Julius Knapp
Rod Small
Dave Ward
David Wye**


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Pursuant to 47 C.F.R. § 1.1206, an original and two copies of this letter and the slide presentation provided at this meeting are enclosed for filing. A copy of the attendance list

Ms. Magalie Roman Salas
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from the meeting is also enclosed. We are providing copies of this submission to the Commission staff present at the meeting. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Barba', followed by a horizontal line.

Thomas M. Barba

encl.

FCC - TIA (October 15, 1998)

Name	Phone	Organization
David Cushman	847-632-5313	Motorola
Charles Iman	202-418-2444	FCC-OET
Peter Tenhuli	202-418-2200	FCC-Comm R Powell
Dan Connors	202-418-2155	FCC-Comm. Ness
Tri Fitzgerald	202-418-1000	FCC - Comm. Kenned
Bob Calaff	202-418-0600	FCC - LTB
Karen Gulick	202-418-2300	FCC - Commissioner Tristari
Derak Khlopik	202-383-1486	TIA
Stacey Stern Albea	202-962-3830	Compaq
JULIUS KNAPP	202-418-2468	FCC - OET
Mary Brooner	202-371-6900	Motorola
LARS G. LARSSON	202-783-2200	ERICSSON
Ray STRASSBURGER	202-508-3605	NORTEL
Rod Small	202-418-2452	FCC-OET
Leo Fitzsimon	202-887-5330	Nokia
DAVE WARD	202-418-2336	FCC-CCB
David Wye	202/418-1897	FCC/WTB
Stewart Baker	202/429-6413	Stephoe & Johnson
Ben Ederington	202/429-6411	Stephoe & Johnson
Paul Misener		FCC - Comm. Furchtgott-Roth

Issues in CALEA Deficiency Petitions

Telecommunications Industry
Association

October 15, 1998

Overview

- Basic Issues
- DOJ/FBI Petition -- “Punchlist”
- CDT Petition

Basic Issues

- 1994 Compromise
- Definition of “Call-Identifying Information”
- Meaning of “Reasonably Available”
- Remand

The 1994 Compromise

- Access to content of communications
- Access to call-identifying information already generated by carriers
- The FCC should preserve Congress' careful balance

“Call-Identifying Information”

TIA Position

- § 102(2): “dialing or signaling information that identifies the origin, direction, destination, or termination of each communication”
- interpretation of § 102(2) in J-STD-025 is reasonable
- “direction” and “termination” relate to call forwarding

DOJ/FBI Position

- expansive, unclear application of terms in § 102(2)
- “call-identifying information” is broader than “call set-up information”
- addition of “direction” and “termination” significantly broadens definition

“Reasonably Available”

TIA Position

- key limitation of § 103(a)(2)
- information must be:
 - accessible to carrier
 - available with carrier equipment
- no requirement to modify network
- must consider business need for information

DOJ/FBI Position

- minimizes scope of limitation (ignores “reasonably”)
- information can be available anywhere in network, to any carrier (ignores “available”)
- cost not dispositive
- business purpose irrelevant

Historical Availability

TIA Position

- § 103(a), not historical evidence, provides standard
- historical availability standard would be unmanageable
- data regarding historical capabilities is limited and in possession of FBI

DOJ/FBI Position

- concedes point
- still tries to justify capabilities involving call-identifying information based upon historical availability standard

Remand -- TIA Proposal

- FCC issues preliminary findings and proposed compliance schedule
- TR 45.2 given opportunity to revise J-STD-025 consistent with FCC findings
- OET engineers participate as members of TR 45.2 standards effort
- If revised standard does not conform with FCC preliminary findings, deficiency challenges may be renewed

DOJ / FBI Petition -- Punchlist

- Conference Call Content (1 item)
- “Call-Identifying Information” (4 items)
- Call-Identifying Information Format and Timing (2-3 items)
- “Ensure” Obligation -- Surveillance Status Information (3 items)
- Standardized Interface Protocols (1 item)

Revised Evaluation of Technical Difficulty of Punchlist Items (Dec. 3, 1997)

- Most Difficult
 - Separated Delivery (no longer on FBI Punchlist)
- Extremely Difficult
 - Network-Generated Signaling
- Extremely Difficult-to-Difficult
 - Feature Status Message
 - Surveillance Status Message
- Difficult
 - Post-Cut-Through Dialing
 - Timing
 - Parties on Hold
- Difficult-to-Less Difficult
 - Subject Initiated Signaling
 - Party Join/Hold/Drop
- Less Difficult
 - Continuity (tone) Check
 - Standardized Interface Protocols (no longer on FBI Punchlist?)

Conference Call Content

TIA Position

- held or dropped legs of a conference call are not “to or from” the subscriber
- because intercept is entirely disconnected from named subject, request is inconsistent with “facilities” doctrine and Fourth Amendment

DOJ/FBI Position

- “to or from” should be interpreted in “functional” rather than “physical or geographical” sense (whole network approach)
- argues “facilities” doctrine, without recognizing inapplicability of cited cases

“Call-Identifying Information”

- Post-Cut-Through Dialing
- Subject-Initiated Signaling
- Party Hold / Party Join / Party Drop
- Network-Generated Signaling

Post-Cut-Through Dialing

TIA Position

- not call-identifying information for LEC
- not reasonably available due to limits on tone decoder resources

DOJ/FBI Position

- does not address
- concedes point, but says costs not dispositive
- concedes voice-recognition dialing provided by third party not covered

(cont'd)

Post-Cut-Through Dialing (cont'd)

TIA Position

- FBI wants access on pen register order to LEC -- but information is already available:
 - on CCC
 - from IXC
- credit card numbers, PIN numbers, etc. at risk

DOJ/FBI Position

- CALEA entitles FBI to pen register access:
 - no requirement to use CCC
 - too difficult to go to IXC
- concedes point; focuses on § 207 minimization requirement

Subject-Initiated Signaling

TIA Position

- not call-identifying information under statutory definition
- J-STD-025 provides essentially all network-detected signaling information
- local signaling information is not reasonably available

DOJ/FBI Position

- covered by “direction” and “destination”
- addresses only Change message where call appearances are combined
- clarifies that request does not extend to local signaling

Party Hold / Party Join / Party Drop

TIA Position

- not call-identifying information
- J-STD-025 provides most party join / party drop information
- not reasonably available where action is local
- not historically available

DOJ/FBI Position

- conference call is multiple communications
- addresses only combined call appearances and discretionary Release message
- concedes point
- concedes point (but argues § 103)

Network-Generated Signaling

TIA Position

- all relevant information provided by J-STD-025
- information not provided is not call-identifying information
- audible signaling information is on CCC
- remote network signaling is not reasonably available

DOJ/FBI Position

- does not provide info. on how call terminates, info. presented to subject, or alphanumeric info. other than phone number
- covered by “direction,” “destination” and “termination”
- optional to provide CCC before answer
- clarifies that request does not extend to remote network information

Call-Identifying Information Format and Timing

- Call-Identifying Information on Call Data Channel
- Timing -- Expeditious Delivery
- Timing -- Synchronization

Call-Identifying Information on Call Data Channel

TIA Position

- not required by CALEA and law enforcement clearly recognizes this fact
- not on pre-petition punch-list

DOJ/FBI Position

- concedes point, but says Commission should require it anyhow
- indirectly referenced in ESI and SP-3580A ballot

Timing -- Expeditious Delivery

TIA Position

- Section 103(a)(2)(A):
“before, during or immediately after the transmission of a wire or electronic communication”
- no requirement in CALEA to set an explicit maximum time
- DOJ does not show that law enforcement needs more speed than J-STD-025 provides

DOJ/FBI Position

- does not satisfy
“association” requirement when call is long; each call is multiple communications
- J-STD-025 must set some standard; willing to accept 99% reliability
- inapplicable, insulting examples (NYC rape and NYC carrier practice)

Timing -- Synchronization

TIA Position

- no synchronization requirement in CALEA
- not reasonably available because not possible to associate network events with timing at IAP at this level of accuracy

DOJ/FBI Position

- J-STD-025 must set some standard
- clarifies that request does not require synchronization with time of subscriber action

Surveillance Status Information

- Continuity Check
- Surveillance Status Message
- Feature Status Message

Surveillance Status Information -- General Issues

TIA Position

- CALEA does not require capabilities not involving call content or call-identifying information
- Section 103(a) obligation to “ensure” does not create second-order obligation to monitor provision of capabilities

DOJ/FBI Position

- Section 103(a) obligation to “ensure” is primary obligation that requires provision of monitoring capabilities

Continuity Check

TIA Position

- not required by CALEA
- carriers do not use C-tone on trunks, and it would be costly to install additional C-tone generators

DOJ/FBI Position

- covered by “ensure” obligation
- clarifies that request limited to nailed-up CCCs
- clarifies that willing to accept any tone or idle pattern
- cost arguments should be disregarded

Surveillance Status Message

TIA Position

- not required by CALEA
- infrastructure does not exist in many networks to automatically verify all aspects of intercept provisioning, particularly for information not relevant to ordinary calls

DOJ/FBI Position

- covered by “ensure” obligation
- capability is already provided by carrier network management infrastructure

Feature Status Message

TIA Position

- not required by CALEA
- very difficult and costly to link up all databases and service providers that provision new features

DOJ/FBI Position

- covered by “ensure” obligation
- clarifies that information need only be provided when feature becomes effective

Standardized Interface Protocols

TIA Position

- not required by CALEA
- contrary to legal opinion of FBI OGC
- J-STD-025 already provides protocol format rules
- changes in protocols requires flexibility

DOJ/FBI Position

- not dictating particular interfaces, but only the number of interfaces
- “law enforcement did not invent the problem of multiple incompatible interfaces”

CDT Petition

- Location
- Packet Data

Location

TIA Position

- not clear whether CALEA requires location information
- J-STD-025 location provisions are reasonable compromise of disputed issue

CDT Position

- CALEA does not require location information
- location information violates privacy provisions of CALEA

Packet Data

TIA Position

- separate header information is not reasonably available call-identifying information for layered packet data protocols
- J-STD-025 does not prejudge court decisions on whether packet stream is available pursuant to a pen register order

CDT Position

- available carrier technologies allow segregation of header information, at least for some protocols
- provision of entire packet stream pursuant to pen register order violates privacy provisions of CALEA

Roving Wiretap Amendment

- Attached to FY99 Intelligence Authorization Bill
- Amends ECPA provisions, permitting law enforcement to move wiretap authority as a target switches from one facility to another
- Congress was careful to ensure that “only the conversation of the suspect (and with whomever he speaks) is intercepted” -- H. Rept.

CALEA § 107(b)

. . . if a Government agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by rule, technical requirements or standards that --

- (1) meet the assistance capability requirement of section 103 by cost-effective methods;
- (2) protect the privacy and security of communications not authorized to be intercepted;
- (3) minimize the cost of such compliance on residential ratepayers;
- (4) serve the policy of the United States to encourage the provision of new technologies and services to the public; and
- (5) provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.